

CANADA / JUDGMENT

R. v. Hayer

2022 BCSC 690

COURT

Supreme Court of British Columbia

DECIDED

28 April 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 690 R. v. Hayer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hayer,

2022 BCSC 690

Date: 20220428

Docket: X083239

Registry: New Westminster

Regina

v.

Munroop Singh Hayer

Restriction on publication: A publication ban has been imposed under s. 486.5 of the Criminal Code restricting publication, broadcasting or transmission in any way information that could identify the witness referred to as A.B. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice Devlin

Reasons for Judgment re: Vukelich Application #2 - Manner of Search of Residences

Counsel for Crown:

D.J. Beesley

S. Wan

Counsel for the Accused Hayer:

T. Paisana

M. Iyengar

Place and Date of Hearing:

New Westminster, B.C.

April 20, 2022

Place and Date of Judgment:

New Westminster, B.C.

April 28, 2022

Introduction

- [1] The accused, Munroop Hayer, is charged, together with Mr. Hothi and Mr. Bottomley, with the first degree murder of Andrew Baldwin, contrary to s. 235(1) of the Criminal Code, R.S.C., 1985, c. C-46 [Code]. On November 11, 2019, Mr. Baldwin was found dead at the home of his friend, A.B., in Surrey, B.C.
- [2] Mr. Hayer has filed a number of pre-trial applications including a challenge to the facial validity of the Information to Obtain ("ITO") for a search warrant for two residences. A voir dire regarding the validity of the ITO is set to be heard on a later date. In relation to the execution of that search warrant, Mr. Hayer challenges the manner of search and seeks to have an evidentiary hearing on this issue. Mr. Hayer takes the position that the searches were conducted in a manner that was not reasonable and therefore in breach of his rights under s. 8 of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c. 11 [Charter]. Mr. Hayer seeks an evidentiary hearing comprised of testimony from several officers who participated in the execution of the search warrant at both residences.
- [3] The Crown takes the position that Mr. Hayer's application for a voir dire should be summarily dismissed because it has no realistic prospect of success on the threshold issue, relying on *R. v. Vukelich* (1996), [1996] B.C.J. No. 1535, 1996 CanLII 1005 (BCCA) [Vukelich] (leave to appeal ref'd: [1996] S.C.C.A. No. 461). They submit the police searched those areas in which the things listed on the warrant might reasonably be expected to be found. While the search may have been unpleasant for the occupants of the residence, that does not make the search unreasonable.

Background Facts

- [4] For the purposes of this ruling, I will briefly set out the facts, relying on the notice of application, submissions of counsel, and application records filed on the hearing. The applicant filed an application record containing the notes of police officers engaged in the two searches, surveillance reports for various dates in January 2020, and copies of the search warrants. The Crown filed a copy of the ITO, which was marked as Exhibit 2 on this hearing. As I stated, on this application I am not dealing with the validity of the search warrants.
- [5] On January 23, 2020, a search warrant was issued, pursuant to s. 487 of the Code, to search for electronic devices belonging to the applicant. The warrant authorized the police to search the residence located at 15390 58th Avenue, Surrey, B.C. (the "Surrey Residence") and the residence located at 1813 Scott Crescent, West Kelowna, B.C. (the "West Kelowna Residence"). A warrant was also issued to search for electronic devices belonging to the co-accused, Mr. Hothi at the West Kelowna Residence.
- [6] The warrant permitted the police to search the two residences for the following:
- Munroop Hayer's electronic devices, including cellular telephones, computer devices, and any other electronic devices capable of accessing the Wickr App, and the electronically stored data contained therein relevant to the offence listed above, specifically:
- (1) Telephone logs between July 17, 2019 and January 23, 2020;
 - (2) Text based digital communication sent and received between July 17, 2019 and January 23, 2020;
 - (3) Photographs and videos recorded, sent or received between July 17, 2019 and January 23, 2020;
 - (4) Internet Browser history between July 17, 2019 and January 23, 2020;
 - (5) Contact book entries;
 - (6) Calendar entries;
 - (7) GPS Mapping data; and
 - (8) Any data that can be used to identify the owner of the device.

Search of the Surrey Residence

- [7] On January 24, 2020 three police officers - Cpl. Kim, Cst. Sylka and Cpl. Ingleston - executed a search warrant at the Surrey residence. The search began at 19:40 and concluded at 20:13. Some family members were present, including the applicant's mother who showed the police officers his bedroom. Cpl. Ingleston and Cst. Sylka conducted a search of the bedroom, which lasted approximately 24 minutes. They seized two tablets and two laptop computers. Cst. Sylka took photographs of these items and Cpl. Kim seized them.

- [8] Cst. Sylka also searched the basement gym, where nothing was located. This search lasted two minutes, between 20:07 and 20:09.
- [9] While Cst. Sylka and Cpl. Ingleston were searching the applicant's bedroom, Cpl. Kim conducted a search of the other rooms in the residence. While not detailed in his notes it does not appear to be disputed that Cpl. Kim looked in the other rooms in the residence including the bedroom of the applicant's parents, his sister's bedrooms, the bathrooms, the kitchen, laundry room, and the various rooms in the basement. Cpl. Kim's notes indicates his search of the other rooms lasted between 19:41 and 19:53 and resulted in "no electronic devices".
- [10] The officers also located a tablet and phone belonging to the applicant's mother, which they did not seize. The applicant also submits the police officers located other devices in his sister's room, which they did not seize.

Search of West Kelowna Residence

- [11] At approximately the same time the Surrey residence was searched, seven officers executed the search warrants (pertaining to Mr. Hayer and Mr. Hothi) at the West Kelowna residence. Det. Rivard directed the search team and her notes indicate they first entered the garage of the residence at 16:41 with the assistance of a female associated to the residence. After photographs of the residence were taken the search lasted approximately two hours, commencing at 17:25 and ending at 19:43. The search can be summarized as follows:
- Cpl. Tanguay and Cst. Murphy first cleared out the basement rooms, which consisted of three bedrooms, three bathrooms, the theatre room, and the living area. Cpl. Tanguay noted the rooms had some furniture but no beds and did not appear to be lived in. He also noted the residence was mostly empty of household items. After the residence was cleared, Cpl. Tanguay searched the living room, washroom, and closet upstairs. He also searched the "spice kitchen" near the kitchen area. He located prescription bottles in the name of the applicant and another Hayer in the cupboard. He located a safe in the closet of the master bedroom, which was opened by other officers, no electronic devices located.
 - Cst. Murphy and Cst. Greig searched the coat closet at the entrance, the garage, the laundry room, the downstairs bar area, pool table, downstairs washroom, and bedroom. His notes also indicate he searched an outside garbage can. No electronic were located.
 - Cst. Dermake searched the master bedroom and located a silver laptop in the left side of a dresser. He also searched the master walk-in closet where he located a Lenovo computer box in a drawer.
 - Det. Rivard seized a white iPad and a Sony Playstation with power cord and a controller from the upstairs TV room. She also seized a silver Macbook from a dresser drawer in the master bedroom and a boxed Lenovo laptop from a drawer in the master bedroom closet, which had been located by Cst. Dermake.

· According to a Task Detail Report written by Det. Rivard, some other items were seized including identification from the master bedroom closet safe. A can of pepper spray located behind a drawer in the kitchen was seized for destruction.

The Governing Legal Principles

- [12] In an earlier ruling indexed as *R. v. Hayer*, 2022 BCSC 558, I set out the governing legal principles regarding Vukelich hearings, which also apply to this application:
- [15] Vukelich hearings serve as "an important trial management goal", as they filter out "proposed pre-trial applications where the circumstances, as disclosed by the submissions of counsel and references to supporting materials, are such that the remedy sought could not reasonably be granted" (*R. v. McDonald*, 2013 BCSC 314 [McDonald], para. 17). The discretion to deny a voir dire is "an important trial management power" that allows a trial judge to "control the course of proceedings and to not embark upon enquiries that will not assist the real issues in the trial": *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCCA 255 [Trans Mountain] at para. 51; see also *R. v. Johnston*, 2021 BCCA 34 at para. 372 (leave to appeal granted: 2021 CanLII 122896 (SCC)).
- [17] Although the Vukelich threshold has been "expressed in different ways at different times" (McDonald, para. 18), the fundamental question is whether the applicant can demonstrate a reasonable basis upon which their application could succeed, or a reasonable likelihood that it can provide assistance to the court (Cody at para. 38; *R. v. Frederickson*, 2018 BCCA 2 at para. 26; *Trans Mountain* at para. 52). As Justice DeWitt-Van Oosten explained in *R. v. Orr*, 2021 BCCA 42 (at para. 46), applicants are not automatically entitled to evidentiary voir dires whenever a Charter claim is raised; applications for Charter relief may be summarily dismissed if the Vukelich threshold is not met:
- [46] there is no automatic entitlement to an evidentiary voir dire in a Charter claim. As a result, where there is no reasonable likelihood that a voir dire can assist in determining the issues before the court, or no reasonable prospect of success in proving an infringement or obtaining the sought-after relief, a trial judge has clear jurisdiction to decline an evidentiary voir dire and to summarily consider and dismiss the application. (Vukelich; *R. v. Greer*, 2020 ONCA 795 at para. 108; *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCCA 255 at paras. 49-52; *R. v. Edwardsen*, 2019 BCCA 259 at para. 62, leave ref'd [2019] S.C.C.A. No. 337; *R. v. Vickerson*, 2018 BCCA 39 at para. 61; *R. v. Frederickson*, 2018 BCCA 2 at paras. 11-14, 24, 26, 33, 39; *R. v. Joseph*, 2018 BCCA 284 at paras. 20-25; *R. v. Cody*, 2017 SCC 31 at para. 38; *R. v. Mehan*, 2017 BCCA 21 at paras. 43-47, 49; *R. v. Pires*, *R. v. Lising*, 2005 SCC 66 at para. 35.)
- [13] As Justice Fitch explained in *R. v. McDonald*, 2013 BCSC 314 [McDonald], application of the Vukelich threshold is contextual and will depend on the facts of the specific case before the court. Among the factors that will shape the exercise of a court's discretion on a Vukelich application are: the extent to which the facts or anticipated evidence underlying the alleged Charter breach are in legitimate dispute; the state and clarity of the law on the issue sought

to be litigated; and the infinite variety of pragmatic considerations that will arise in a given case and suggest resolution of the application in one way or another: McDonald, (para. 21).

- [14] In *R. v. Gill*, 2018 BCSC 661 [Gill], Justice Schultes observed that the only question to be determined on a Vukelich application "is whether there are facts alleged, either in the notice or counsel's submissions, that if found in the defence's favour could support one of the remedies being sought" as "if there are such facts, the application should proceed to the next stage of a full hearing" (para. 24).
- [15] As I have stated, on this application Mr. Hayer seeks an evidentiary hearing regarding the manner of search at the two residences. To be reasonable under s. 8 of the Charter, a search must be authorized by law, the authorizing law must itself be reasonable, and the search must be conducted in a reasonable manner: *R. v. Collins* (1987), 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265, at 278. The onus is on the applicant, as the party alleging a breach of his Charter rights, to prove that the search contravened s. 8 of the Charter.
- [16] *R. v. Cornell*, 2010 SCC 31 is a leading case regarding the manner of execution of search warrants. In this case, the issue was whether a lawfully authorized search involving "dynamic entry" into the accused's residence was conducted reasonably. At para. 24, a majority of the Court states that the role of the reviewing court in assessing the manner in which a search has been conducted is "to appropriately balance the rights of suspects with the requirements of safe and effective law enforcement, not to become a Monday morning quarterback". In *R. v. Cornell*, 2009 ABCA 147 [Cornell (ABCA)], Slatter J.A. also observed at the appellate level, at para. 6:

Second, the law has long recognized the special status of personal dwellings and has offered them special protection. But criminals cannot shield their activities from search by conducting them out of their homes. Any search of a dwelling will compromise the sanctity of the home. However, the fact of the search is primarily responsible for that compromise. Even if the method of search is unimpeachable, the sanctity of the home will be affected. The fact is that a search of a private dwelling is never going to be a pleasant experience for the targets of the warrant, and mere unpleasantness is therefore not an indication that the search was on its face unreasonable.

[Emphasis added].

- [17] In *R. v. Vu*, 2013 SCC 60 [Vu], the Supreme Court recognized (at para. 1):

The traditional legal framework holds that once police obtain a warrant to search a place for certain things, they can look for those things anywhere in the place where they might reasonably be; the police do not require specific, prior authorization to search in receptacles such as cupboards and filing cabinets.

- [18] In determining that search of computers required specific, prior authorization the Court in *Vu* discussed the need to strike "an appropriate balance between the right to be free of state interference and the legitimate needs of law enforcement" (para. 21). In addition to the requirement to obtain prior judicial authorization, the authorized search must be conducted

in a reasonable manner. As the Court explained "this ensures that the search is no more intrusive than is reasonably necessary to achieve its objectives" (Vu, para. 22). At para. 23, the Court also accepts the general proposition stated by the Court of Appeal in *R. v. Vu*, 2011 BCCA 536:

I accept the general proposition, as stated by the Court of Appeal, that "[a] warrant authorizing a search of a specific location for specific things confers on those executing that warrant the authority to conduct a reasonable examination of anything at that location within which the specified things might be found": para. 63. In other words, specific prior authorization to search anything at that location is not required

[19] Similarly in *R. v. Sipes*, 2011 BCSC 1763 [Sipes] at para. 205:

A search warrant permits the police to enter a place to search for the things authorized by the warrant. The search must be conducted in a manner consistent with the things authorized. For example, if the warrant only authorized the police to search for a 51" television set, it would not be reconcilable for the police to search the drawers of a desk. If they did and found a quantity of drugs, s. 489(1) of the Code would have no application because the television could not have been secreted in a desk drawer.

[20] With these legal principles in mind, I turn to my analysis.

Discussion

[21] The applicant submits that the police officers did not restrict themselves in any way in carrying out the search. Rather, they searched everywhere, including locations that could not reasonably have been expected to contain electronic devices. In both residences they say the police searched each room regardless of whether Mr. Hayer had any association with that room. They submit the manner of search is inconsistent with searching for electronic devices. Therefore, they submit an evidentiary hearing is required to determine the real purpose for the police searching the various rooms in the residence.

[22] When pressed to identify what evidence would be called at the voir dire counsel identified Cpl. Kim with respect to the Surrey residence and Det. Rivard, Cst. Murphy, and Cst. Greig regarding the search of the West Kelowna residence. As I understand their position, they seek to question these police officers as to why they searched the various rooms of the residence. They also advised that they may seek to call members of Mr. Hayer's family who were present at the Surrey residence to establish the intrusive nature of the search.

[23] While I accept that Mr. Hayer's family members may have found the search of their family home in Surrey unpleasant that does not support a claim by the applicant that the manner of search was unreasonable (see *Cornell (ABCA)*, para. 6). Based on the record that has been provided, it is apparent that the search was no more intrusive than reasonably necessary. For example, Cpl. Kim's search of the various rooms of the Surrey residence was 12 minutes in duration. Indeed, the police exercised their discretion and determined that electronic

devices belonging to the applicant's mother and sister were not subject of the authorization.

- [24] Unlike the analogy provided in Sipes of a search for a television set in a desk drawer (para. 205), this was not a case where the thing searched for was irreconcilable with the authorization: The Crown relied on a number of cases to illustrate that electronic devices can be secreted in a wide variety of places within a residence. For example, in *R. v. Levac*, 2020 SKQB 171, the police located a cell phone in the sock drawer inside the accused mother's drawer. In *R. v. Subia*, 2022 ONSC 1693, the accused's cell phone was located submerged in a toilet tank in a bathroom next to his room. Given the wide array of places that electronics may be located, the decision to search the various rooms was reasonable.
- [25] I am mindful of the guidance provided in McDonald and Gill when determining the merits of an application on a Vukelich hearing. I conclude the applicant's submission that the police must have been looking for items other than electronic devices is pure speculation and without merit.

Conclusion

- [26] At this stage, I am not satisfied that the applicant has established a basis upon which the Court should embark upon voir dire and hold an evidentiary hearing. However, given that there are several other pre-trial applications pending, I will permit the applicant to seek leave to re-visit this decision if further information relevant to this application comes to his attention.

"Devlin J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/06/2022BCSC0690.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hayer-2022-bcsc-690>

Prepared on 27 October 2026 · Esheria